

FACTSHEET

TITLE: **CHANGE OF ZONE NO. 3399**, requested by the Directors of the Planning and Public Works & Utilities Departments, to amend Ordinance No. 18113 relating to impact fees (Title 27 of the Lincoln Municipal Code).

STAFF RECOMMENDATION: Approval, with amendment submitted on November 12, 2003.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 10/29/03 and 11/12/03
Administrative Action: 11/12/03

RECOMMENDATION: Approval, with amendment as recommended by staff on November 12, 2003, and with amendment reinstating the language on lines 20-21, on page 22 of this Factsheet, regarding adjustments for inflation (8-0: Larson, Carlson, Bills-Strand, Marvin, Duvall, Taylor, Krieser and Steward voting 'yes').

FINDINGS:

1. The purpose of these proposed amendments to the impact fee ordinance (p.15-23) are to clarify language regarding grandfathering of building permits, handling of administrative costs, arterial street costs, adding inflation to impact fees, processing of low and moderate income reimbursements, eliminating the out-of-date category exemption table and processing of fee reimbursement for economic development.
2. The staff recommendation of approval is based upon the "Summary" as set forth on p.2-3, and the "Analysis" as set forth on p.4-6, concluding that the proposed amendments to the impact fee ordinance are in conformance with the goals of the Comprehensive Plan and could help provide for growth and development of the community.
3. The public hearing before the Planning Commission was held on October 29, 2003, and continued on November 12, 2003, at which time the staff submitted a proposed amendment (p.24) to clarify the intent regarding amendments to previously approved developments that qualify for category exemptions. This amendment resulted from discussions by staff with Peter Katt and Kent Seacrest, who had expressed concerns at the original public hearing.
4. Bill Newstrom, on behalf of the Realtors Association of Lincoln, submitted a proposed amendment at the original public hearing on October 29, 2003, to expand the impact fee exemption to include all low-income purchasers, not just those utilizing government programs (See Minutes p.7, and letter from Peter W. Katt dated October 27, 2003 [p.25]). **Note:** The Planning Commission did not recommend this amendment, since it went beyond the scope of the advertised hearing and would require a new advertised public hearing.
5. Peter Katt, Kent Seacrest and Lynn Moorer raised issues and concerns at the public hearing on October 29, 2003 (See Minutes, p.8-9), and Mr. Seacrest's request for a two-week deferral was granted.
6. Continued public hearing was held on November 12, 2003, at which time Kent Seacrest and Peter Katt agreed to the staff's proposed amendment regarding amendments to previously approved developments. Peter Katt was opposed to making inflation an automatic increase to impact fees. (See Minutes p.11-12).
7. On November 12, 2003, the Planning Commission voted 8-0 to approve the staff recommendation, with the amendment submitted on November 12, 2003 (p.24), and with amendment to reinsert the language which staff had recommended be deleted regarding inflation (lines 20 and 21, p. 22, "Such adjustments in such fees shall become effective upon approval by resolution of the City Council."). **Note:** A motion to delete this language as recommended by the staff had failed 3-5 (Carlson, Marvin and Taylor voting 'yes'; Larson, Bills-Strand, Duvall, Krieser and Steward voting 'no'). See Minutes, p.13-14.
8. On November 12, 2003, the Planning Commission placed the proposed criteria for reduction of impact fees for economic development (Miscellaneous No. 03012) on their pending list for six months, with expressions of interest in a broader-based incentives package. Until this issue is resolved, staff recommends that the existing language in the ordinance [27.82.110(i), proposed to be 27.82.110(h)] be retained.

FACTSHEET PREPARED BY: Jean L. Walker

REVIEWED BY: _____

REFERENCE NUMBER: FS\CC\2003\CZ.3399

DATE: November 18, 2003

DATE: November 18, 2003

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for October 29, 2003 PLANNING COMMISSION MEETING

P.A.S.: Change of Zone #3399 Amendment to Impact Fee Ordinance

PROPOSAL: Several amendments are proposed in order to clarify language regarding grand fathering of building permits, handling of administrative costs, arterial street costs, adding inflation to impact fees, processing of low and moderate income reimbursements, eliminating the out of date category exemption table and processing of fee reimbursement for economic development.

CONCLUSION: The proposed amendments to impact fee ordinance are in conformance with the goals of the Comprehensive Plan and could help provide for growth and development of the community. Impact fees provide for uniformity and equity among property owners and similar land uses. These amendments retain the original purpose of the impact fee ordinance. The amendments will clarify some minor conflicting sections and will aid in the processing of low and moderate income fee reimbursements. The amendment to the reimbursements for economic development will provide an incentive to primary employers to create new jobs and will aid in administering the criteria.

RECOMMENDATION:

Approval

LEGAL DESCRIPTION: Zoning Code – amend to add text in the following sections :

27.82.050 imposition of impact fees;
27.82.060 exemptions from impact fees;
27.82.070 creation of an impact fee fund and impact fee accounts;
27.82.080 refunds of impact fees paid;
27.82.110 miscellaneous provisions;
Amendments codifying the Downtown/Antelope Valley exclusive area map the benefit areas maps as appendixes to Chapter 27.82; and
amending the arterial street section of the adopted Lincoln Impact Fee Study and providing for publication by posting on the official bulletin board of the City.

ASSOCIATED REQUEST:

Misc. #03012; Criteria for Impact Fee Reimbursement for Economic Development.

SUMMARY: In general the amendments to the Impact Fee Ordinance are to:

1. Clarify that reimbursement in impact fees is for economic development only. Once the City Council adopts the criteria, based on objective standards, then requests will be processed administratively rather than requiring Council hearings and actions. (The specific criteria for

Impact Fee Reimbursement for Economic Development is included in the staff report on Misc. #03012.)

2. Clarify conflicting language regarding the grand-fathering of building permit **applications**.
3. Clarify that administrative costs are deducted from impact fees and should not be an additional amount added to each fee.
4. Clarify conflicting language regarding streets that: 1) developers should continue to pay for sidewalks along arterial streets, instead of using arterial street impact fee funds to build sidewalks; 2) utility adjustments in street projects would not be paid from arterial street impact fees; and 3) clarify that developers should continue to pay for additional traffic signals, when warranted. In general, impact fees would be used only at major intersections and approximately the ½ mile point (when warranted.) These changes were based on recommendations by Mayors Infrastructure Finance Committee.
5. Automatically add inflation, beginning in January 1, 2005, rather than by separate City Council action each time.
6. Amendment to facilitate reimbursement and processing of previously approved fee reimbursements for low and moderate income housing.
7. Eliminate out of date category exemption table and clarify processing of amendments to previous agreements granted exemptions.

COMPREHENSIVE PLAN SPECIFICATIONS:

These proposals are in conformance with the new 2025 Comprehensive Plan. Selected pertinent sections from the Plan include:

The pertinent principles in regards to impact fees include:

“Overall Guiding Principles

There needs to be a balance between new infrastructure in developing areas and the improvements and maintenance needs of the existing community. Funding for infrastructure improvements should not focus all of the funds into developing areas, leaving inadequate resources to address needs in other areas. The City and County need to adequately fund infrastructure maintenance and improvements in existing towns and neighborhoods.” (Page F 159)

Guiding Principles for Financing Urban Infrastructure

A Balanced Approach: The community at large should provide more financing of maintenance and improvements in existing areas. Both new and existing development should

pay its fair share of improvement costs due to growth and maintenance. In general, improvements which are of general benefit to the whole community should be paid by the community while improvements which are of special benefit to a specific area should be paid by that area.

Develop a Fair & Predictable System: Distribute infrastructure costs fairly among all property owners who benefit from the improvements. The goal of the financing system is that costs should be known in advance of development.

Minimize Impact on Affordable Housing: Infrastructure financing should not increase the cost of affordable housing in Lincoln and the City should encourage retention of affordable new housing in existing neighborhoods. (Pages F 160 -161)

Establish an impact fee at time of building permit for road improvement costs in developing areas. Fees should not be at full capital recovery cost for residential uses. Large traffic generators, like commercial and industrial businesses, will pay a majority of the costs due to their traffic impact. Some mechanism should be employed so that the road impact fee does not impact affordable housing.” (Page F 162)

ANALYSIS:

1. At the time the impact fee ordinance was adopted in January 2003, it was noted that as the impact fee system was implemented, there may be some housekeeping matters to bring forward at a later date. During the past few months a few areas were identified where minor changes in the ordinance would improve the processing of impact fees. The following is an explanation of each proposed change.
2. Section 27.82.060 (a) (5) is being clarified to note that building permits applied for prior to the June 2, 2003 starting date of impact fees will be “grand-fathered” from impact fees. Currently this section stated that the permits had to be issued. However, this is contrary to Section 27.82.0505 (a) which states that impact fees would begin on June 2, 2003 for building permit applications on or after this date. It was determined that the intent was clearly for building permit applications prior to June 2, 2003 to be grand fathered.
3. Section 27.82.060 is also being amended in regards to the category exemptions from impact fees for developments which previously paid for impact fee facilities such as arterial streets or larger water mains (16 inches or larger in size.) Section 27.82.060 (b) (1) referenced a table of preliminary category exemptions determinations. The proposed amendment is to eliminate this table which is now out of date. During the past few months, developers in a few cases submitted information proving they had previously contributed to the cost of an impact fee facility and thus were entitle to a category exemption under the ordinance. In the future, further documentation may also change the list of exemptions. Since these exemptions may updated, the table should be eliminated from the ordinance.
4. The category exemption text is also being clarified to note that amendments to exempted property will be subject to impact fees.

5. The last amendment to this section is in regards to the processing of low and moderate income housing fee reimbursements. Section 27.82.060 (d) currently requires the house to be **occupied** prior to the fee reimbursement being valid. However, providing fee reimbursements after the closing on the new house was problematic for lenders and builders. The revised text eliminates the requirement the house be occupied. The applicant will still have to prove the household buying the house meets the low and moderate income thresholds. The amendment will allow for an alternative time for the reimbursements, such as at time of closing, rather than requiring reimbursement at time of occupancy. The low income housing amendment is also found in Section 27.82.080.
6. The amendment to Section 27.82.070 "Impact Fee Funds" would clarify that the previously approved administrative costs would be deducted from the fees collected not added to the fee. Currently, the ordinance states in Section 27.82.110 that administrative costs would be an additional charge. The text in Section 27.82.110 is being eliminated and new text added to 27.82.070 to clarify that no more than 2% could be used for administrative costs.
7. The amendment to 27.82.110 (h) "Miscellaneous Provisions" is in regards to the previously title "Discretion to Reduce Impact Fees." This section is being revised to clarify that the Reimbursement of Impact Fees in this section should only be for economic development based on an objective criteria. The current language provides for the discretion of a super majority (5 of 7) of the City Council to reduce impact fees based on goals and objectives of the City Council.

The proposed text states that the Impact Fee Administrator would reimburse arterial street impact fees for economic development only in conformance with the criteria adopted by the City Council. (See staff report Misc. #03012 for the review of the criteria) This criteria is designed to be completely objective and include no amount of discretion. If a primary employer provides the creates and maintains for 3 consecutive years, 30 new jobs and invests \$3 million in buildings and equipment, then 50% of the arterial street impact fees would be reimbursed. The reimbursement is 100% for the creation of 100 new jobs and a \$10 million investment.

8. The processing of impact fee reimbursements will be less time consuming and easier to administer by having the Impact Fee Administrator follow the City Council's measurable criteria. It will also provide more predictability for the companies investing in the community.
9. The amendment in Section 27.82.110 (k) "Adjustments for Inflation" is being amended to start adding inflation in January 2005, rather than 2004. In addition, the amendment would have the inflation added automatically each year rather than by a separate action of the City Council each year. The amendment also designates the 12 month time period prior to August of each year as the period for using the U. S. Consumer Price Index for All Items.
10. The amendment to Section 17 of the approved impact fee ordinance relates to the arterial street section of the Impact Fee Study. Based on the recent recommendations of the Mayor's Infrastructure Finance Committee the following changes in the calculation and use of the arterial street impact fees is proposed:

- 1) Developers should continue to pay for sidewalks along arterial streets, instead of using arterial street impact fee funds to build sidewalks. Section 26.23.095 "Sidewalks" of the Land Subdivision Ordinance requires sidewalks along both sides of all streets including major streets. These sidewalks will remain the responsibility of the adjacent property owner or developer.
- 2) Utility adjustments in street projects would not be paid from arterial street impact fees. Any movement of water or sanitary sewer lines caused by road projects would be paid for using utility rate funds.
- 3) Clarify that developers should continue to pay for additional traffic signals, if and when warranted -- except that signals at the intersection of two major streets and approximately at the ½ mile in between will be funded, when warranted, by impact fees. The amount of traffic signals per mile to be paid for by arterial street impact fees would be reduced from 3.5 to 1.5. This would provide for financing of signals at the intersections of two major streets and generally at the ½ mile point in between.

Prepared by:

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Principal Planner

October 20, 2003

APPLICANTS:

The Directors of Planning and Public Works & Utilities Departments

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CHANGE OF ZONE NO. 3399

PUBLIC HEARING BEFORE PLANNING COMMISSION:

October 29, 2003

Members present: Taylor, Duvall, Carlson, Larson, Marvin and Steward; Krieser and Bills-Strand absent.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

Proponents

1. **Steve Henrichsen** of Planning staff presented the proposed text amendments to the impact fee ordinance. These are basically “housekeeping” changes to the ordinance as a result of reviewing the ordinance and using the ordinance over the last several months. This proposal does not make any substantive changes at this time. While the Economic Development Criteria will have a separate public hearing, there is one reference in this proposal to the economic development criteria which is an amendment that would say if the criteria is adopted, then it would be an administrative action to grant reimbursement for economic development rather than that being a City Council action.

Public Testimony

1. **Bill Newstrom** testified on behalf of the **Realtors Association of Lincoln**, and submitted a letter sent to the Planning Department staff by Peter Katt. Newstrom addressed the major flaw in the original impact fee ordinance – disallowing senior citizens the low income impact fee exemption that is allowed to younger families. Picture this: A senior citizen widow living on a modest monthly fixed income realizes her current two-story 50 year old home is going to require more money than her income will afford for the continued maintenance and monthly utilities. She decides to sell and purchase a smaller energy efficient townhome with assistance to take care of lawn and snow removal. She has been paying property taxes and wheel taxes. We can hopefully assume a good share or portion went toward street construction and street repair for her neighborhood as well as others. When the sale of her home is closed, she receives barely enough to purchase her new townhome. But since she is a senior citizen and is not applying for any government loan, she would be expected to dig into her savings to pay the additional \$2500 to \$9000 impact fee, even though the young home buyer using nearly 100% financing on a government program would not have to pay this fee, and even though the income of the young family is much higher than the senior citizen. The Realtors Association urges the Commission to expand the exemptions to include all low income buyers, not just those utilizing government programs. The Realtors Association is the original advocate for home ownership and housing matters. Home ownership is critical to our local economy and the future of our city. This barrier to home ownership should be lifted to give senior citizens the opportunity to live in a home their income will allow, and their option should not be dictated by their ability or inability to qualify for a government housing program.

2. Peter Katt testified that he is not entirely in opposition. His testimony is to make comments and to express some concerns about the proposed amendments. His law firm has been actively involved with a number of clients as the impact fee ordinance was developed and debated. The proposed amendments have been discussed as “minor clarifying” amendments. Katt’s assessment would disagree with that conclusion as to three components:

Amendment “d” increases arterial street costs for developers.

Amendment “e” is effectively an increase in impact fees and is a significant policy change providing for automatic increases in impact fees by inflation. We do not do that with our permitting and taxing and this proposed policy change should have a separate hearing.

Amendment “g” provides for some change in the language with regard to processing categorical exemption amendments. If you look at the language dealing with categorical exemptions, it was his law firm’s position that granting categorical exemptions was a mistake—it was bad policy. If you paid a dollar for an impact fee facility, that payment entitles you to complete categorical exemptions for those impact fee facilities. That is a bad public policy. It never made sense but it was adopted. Exemptions should be based upon the dollar spent and credits provided to the fees rather than categorically exempting them. The original justification by staff was that it would be easier because the administrative burden of trying to administer a dollar-for-dollar credit was way too much work. What they found out is that categorical exemptions have not limited or reduced the amount of work.

In addition, with the proposed language, it now purports that an amendment to a development will require the need for some type of negotiation or the categorical exemption simply goes away. It would appear that this would result in the return of developer negotiations which is one of the benefits we are supposed to avoid by having impact fees. What is the process that will be followed with the proposed language for the amended process for categorical exemptions? What standard will be applied for applying the categorical exemptions to the amended project? How is this new amended language for this consistent with the guiding principle of making impact fees fair and predictable?

Marvin suggested that categorical exemptions seem to be a grandfather clause to allow people not to have to be exposed to changes in the future based on arrangements they have already made. How do you address the principle of grandfathering things but yet you still want to open up the categorical exemptions? Katt responded, stating that the grandfather principle does not apply to impact fees. It is not one and the same. Dollar-for-dollar credit provides what was negotiated. The categorical exemption says you pay x dollars and you may get x times 1,000 in benefits today. Those dollar benefits go directly into the developer’s pockets. You get more than the benefit of your bargain. But, Marvin suggested that you don’t know whether a property owner might have paid more for the land than they otherwise would have if they would have known there would be impact fees. That is what the grandfathering tries to protect. Katt agreed. That is a policy decision that has been made by the city for the categorical exemptions and it is in place. Today you are seeing a recommendation to amend categorical exemptions and it says you no longer get the benefit of a categorical exemption if you amend your project. This is a very significant substantive change in that it purports to take away the

categorical exemptions on any project that gets amended. It obliterates the grandfather clause for any project that comes in and is amended. Categorical exemptions were intended to broadly protect the grandfathering principle and to make the administration easy on the staff. At that point, we said there is no easy application. You still need to look at each project individually and the dollars that were spent. The question is, how do you coordinate and apply past agreements that the city has had on new projects as they move forward? What is the policy standard going to be?

3. Kent Seacrest testified on behalf of Ridge Development Company and Southview, Inc. He also disagreed that these are “minor” amendments. There are some economic impacts here. He is also concerned about the amendment on categorical exemptions. There needs to be some tightening up of the language. The Duncan study made the assumption that the city would be picking up sidewalks along arterial roads and doing traffic lights at the half and quarter mile, and now they don’t want to do that. A traffic light is a \$100,000 ticket item. That is an equivalent to my clients of increasing impact fees. He requested a two-week deferral to meet with the staff and understand the proposed amendments and to bring forward amendments as he deems necessary.

Marvin inquired whether the Mayor’s Infrastructure Finance Committee looked at who was to pay for the sidewalks along arterials. Seacrest does not think that came before the Finance Committee, so it must have come before some of the other subcommittees. Seacrest also believes there are several good amendments, but there are a few that need further clarification or cleanup.

4. Lynn Moorer testified that these amendments are far more than minor housekeeping changes. She is opposed to making the reimbursement of impact fees an administrative function. She suggested that the reimbursement is very much dependent on the nature of the criteria and, given the criteria being proposed, it is a major change to remove it from the discretion of the City Council to a staff administrative mechanism. Removing discretionary authority by the City Council and apparently envisioning something that is much more automatic or discreet in terms of decision making is not a minor amendment. What you adopt with this can affect a whole lot of the rest of the current ordinance, as well as important considerations as to how it fits into the Comprehensive Plan.

Staff questions

Carlson asked staff to respond to Katt’s comments regarding the categorical exemptions. Henrichsen indicated that the staff would not be opposed to a two-week deferral. Regarding categorical exemptions, Henrichsen clarified that the whole idea of categorical exemptions is not what is before the Commission, but more specifically what to do with an amendment. There is no intent to remove the categorical exemption for the entire project when amended. If you come forward and add 200 units, those new additional units may be subject to the impact fee the same way as some other project that came forward with 200 units. Before impact fees, all of our previous annexation agreements set forth the costs and the fees. Those agreements also always noted that if you came back and changed your project, you might have a cost associated. This has been very standard in any annexation agreement. That is what we are proposing here. If you come back to amend your project, that increment of increase may be subject to the cost as well.

Steward inquired what would happen if the development came back to diminish the project? Henrichsen clarified that there is a category exemption for the whole project, so there would be no

reduction. Under category exemptions, there is no payment made--they are not subject to the fees because they have already paid their costs.

With regard to eliminating reference to government programs, Henrichsen explained that there are two things that had been discussed in terms of low income and when that low income reimbursement is processed. This amendment takes out language that said that reimbursement is not valid until the a house is occupied. In discussing this with builders and lenders, it was suggested to remove that clause so that it could be done at another time such as at closing. This amendment does not change the number of people available to use the reimbursement. It just changes the processing time.

Henrichsen further commented that Mr. Newstrom's idea would expand the exemption on the number of people available under low income. Our definition of low income required that that person be subject to some local, state or federal program. Our thought here was that since you were in some other program, that would curb the number of people that would try to abuse the system. It would be important to include some provisions as to how the city might address people who might try to abuse the reimbursement. The staff is not in favor of addressing the Newstrom amendment.

Marvin asked staff to address the sidewalk issue on arterial streets. Henrichsen explained that in general, the Mayor's Infrastructure Finance Committee addressed several items in terms of overall costs. They did not address impact fees, but there was a recommendation that traffic signals should be the responsibility of the developer or the adjacent property owner and that sidewalks be the responsibility of the adjacent development and property owner, the same as it has been for many years. The staff suggests that this should also applied to the arterial street impact fee.

Duvall moved to defer two weeks, with continued public hearing and administrative action scheduled for November 12, 2003, seconded by Taylor and carried 6-0: Taylor, Marvin, Duvall, Carlson, Larson and Steward voting 'yes'; Krieser and Bills-Strand absent.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

November 12, 2003

Members present: Larson, Carlson, Bills-Strand, Marvin, Duvall, Taylor, Krieser and Steward.

Staff recommendation: Approval.

Ex Parte Communications: Commissioner Marvin stated that he visited with Darl Naumann after the last meeting.

Proponents

1. Steve Henrichsen of Planning staff submitted a proposed amendment prepared by the City Attorney. After the last meeting, the staff met with Kent Seacrest and Peter Katt with regard to how category exemptions would be handled on amended applications and the proposed amendment is a result of those discussions. The amendment attempts to provide clarification of the intent; that is, when a project previously was granted a category exemption because there was already a development agreement, if that development comes back through to add some additional development, they must pay for the increment of that addition. This language also clarifies that we are looking for amendments

that would increase the impact on the impact fee facility. For example, if you had an arterial street and the project comes back with additional square footage, with some shifting of the types of uses which decreases the trip generation, then potentially there would not be an impact fee on the incremental increase because the impact on the street system was not increased.

Steward commented that we are working from a “City/County” Comprehensive Plan, yet the impact fees are primarily being related to the city finance structure. Why are we not considering both the county and city in this strategy? Henrichsen explained that the proposed amendments relate to the “existing” impact fee ordinance. We are not trying to expand the original ordinance, but address the economic development criteria already called for in the original ordinance, thus the impact fees only cover infrastructure items provided within the city limits. The ongoing rural acreage studies are looking at the economic impact of acreages within the county.

Carlson suggested that the relationship between this text amendment and the economic development criteria resolution is that the text amendments to Title 27 create the language for the proposed economic development criteria to be implemented.

Marvin wondered how to extract the economic development criteria language if the Commission is not happy with using LB775 as a mechanism for the reductions. Henrichsen explained that the language in the ordinance merely provides that once the criteria has been created, the impact fee administrator is charged with implementing that criteria. That’s all it does.

2. Kent Seacrest appeared on behalf of **Ridge Development Company and Southview, Inc.**, and acknowledged that two weeks ago, he asked for the delay to meet with city staff and he now agrees with the proposed amendment. He did talk to the staff because there is some language referring to “the approved development”. Seacrest believes that would also include an annexation agreement that might have included three phases, i.e. so that when phases 2 and 3 come, that would have been deemed an “approved development”. He agrees with this interpretation. Seacrest also suggested that many of the amendments are the result of the consensus that came out of the Infrastructure Finance Committee process. That process included a variety of suggestions, including issuing bonds and allowing temporary pump stations in certain situations, as well as shifting the sidewalks and two traffic lights within one mile on an arterial out to the infrastructure road fund, which means “it’s on the private sector’s back”. He understood that to be a comprehensive package approach. Seacrest stated that he will not oppose the language on the issue of the traffic lights and sidewalks with the understanding that the administration is still pushing “the package”. The effort we are all striving for is to try to find replacement funds. Some of that package never has been acted upon. He has been told that the administration intends to keep pushing for that package.

3. Peter Katt appeared and expressed appreciation for the opportunity to meet with the staff with regard to the proposed amendment, which Katt does not believe fully sets forth the standards that will apply, but it is better than it was. Katt pointed out that we have had this impact fee ordinance for less than a year and it is very important to remember one of the key topics of discussion—one of the key selling points on impact fees was “no more negotiations—you plug in your number and you’re done”. Katt suggested that this particular amendment revisits negotiations. Impact fees do not do away with negotiations. This must be remembered. They do not eliminate the need to do negotiations and individually tailor how much is going to be paid.

With regard to the traffic lights and arterial sidewalks, Katt believes that to be an indirect impact fee increase already. It did come out of the infrastructure study as a package recommendation. If the Commission adopts the proposed language, it is an increase in the impact fees without a corresponding increase in any other component of the package. "Don't forget what you are doing."

Katt suggested that adding inflation to the impact fee automatically is a change in policy. He believes it is bad policy to have automatic increases built into taxes, permitting fees, etc., without having to go through the public discussion and the public pain that accompanies it to make sure that it is a good policy decision to be made. It should not be automatic and it should not be easy.

But, Marvin believes that inflation is automatic. Katt agreed, but you could make that argument with absolutely every fee and every cost that we have. Marvin stated that all kinds of things are stepped up in taxes with inflation. Katt stated that his point is not that it is not done and not that you can't articulate a good reason to do it. What he is trying to say is that to date, in the city of Lincoln, the city has made a policy choice that permits, fees, licenses, taxes, etc., are not automatically increased by inflation. If we are going to shift to a policy based on inflation, don't pick and choose which ones you are going to do, but make it applicable to all of them. That's the point—have a consistent policy.

Steward inquired whether Katt had recommended language that would satisfy his concerns. Katt suggested that the Commission reinstate the language in 27.82.110(k) that is proposed to be stricken by staff: "Such adjustments in such fees shall become effective upon approval by resolution of the City Council." This takes the "automatic" inflation out.

Henrichsen clarified that if the Commission wants to continue to have any adjustment for inflation to be an act of the City Council, the language on page 100, lines 20 and 21 would not be stricken. This is the text of the ordinance that currently says inflation will be added after approval by the City Council. It has always been the intent that inflation would be added, and the process was that it would take a separate action of the City Council to add inflation. As we discussed the ordinance, we had discussed the idea that inflation would be added, and the figures noted that inflation had not yet been added. A lot of the testimony focused on many of the other items in the ordinance and he does not believe there was a lot of specific testimony on this specific issue; however, Henrichsen believes that the intent was noted that inflation would be added each year.

Steward asked Henrichsen if he agrees that it is an anomaly in terms of other fees and tax structures that we have thus far implemented. Henrichsen believes that Building & Safety does have one fee which does have an automatic increase for inflation, but in general, there are probably a lot of fees of the city that are not automatically tied to inflation.

Marvin pointed out that the impact fees are already set up to increase annually over a period of five years. Does the City Council have to revote that part of the ordinance to implement automatic inflation? Henrichsen stated that the City Council adopted a fee schedule for all five years, 2003-2007.

Bills-Strand offered that typically, when LES wants to raise rates, it has to be justified before the City Council. Henrichsen concurred.

There was no testimony in opposition.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

November 12, 2003

Bills-Strand moved approval, with the amendment as submitted by staff today, and with amendment to reinsert the language which requires the City Council to approve adjustments to the impact fees so that it is not automatically adjusted with inflation, seconded by Larson.

Bills-Strand believes that the impact fees should be treated the same as all other fees. Let's justify the need to increase and not just assume it is needed.

Carlson moved to amend to delete the language, as recommended by the staff, so that there is automatic inflation, seconded by Marvin.

Marvin stated that there is no question we are going to have inflation and we can inflate the impact fee down over time. He believes it was always understood that there would be this inflation index to impact fees.

Bills-Strand suggested that she can't always give raises that match inflation— she can't always justify her bottom line to match inflation. She does not think that one industry should be tied to inflation and not all of them.

Marvin was concerned about what number will be used each year to add the inflation. Steward pointed out that there is a schedule so he presumes that each fee will be known. Marvin wondered what would happen after the first 5 years. Bills-Strand believes there is a set schedule plus inflation for each year. Marvin was curious about what the Planning Department will recommend to the City Council when they look at inflation. Bills-Strand suggested that at that point they would consider a new plan or take another look at that point in time. It's really no different than LES where they have to justify the need to raise rates.

Carlson commented that during the Comprehensive Plan process, this was discussed and every presentation he attended and every document he had indicated that inflation would be part of the discussion. This is essentially part of the philosophy that was enacted.

Steward declared a point of order. If the motion to amend passes, the automatic inflation stands. The only thing in question is whether the Council will approve it or not. Carlson urged that the original intention and the ongoing debate was that the inflation would be automatic.

Larson believes that automatic indexing is sort of a dangerous thing; however, it needs to be done. He believes we have a good compromise in that we have indexing but we have approval of the City Council each time. This is a way to make sure we're staying in line as we go along. He wants the language left in.

Peo clarified that the ordinance talks about the Council making that analysis each year as to whether inflation should be added. We have picked a month to base the inflationary factor upon and whether or not that could happen automatically. A "yes" vote on the motion to amend means automatic inflation. A "no" vote on the motion to amend gives City Council the authority over inflation.

Motion to amend which strikes, "Such adjustments in such fees shall become effective upon approval by resolution of the City Council", which is the recommendation of the staff, failed 3-5: Carlson, Marvin and Taylor voting 'yes'; Larson, Bills-Strand, Duvall, Krieser and Steward voting 'no'.

Carlson confirmed that nothing has changed with the proposed amendment to 27.82.110 E, regarding the Downtown/Antelope Valley Exclusion Area Map. We're just changing the way it has been referenced.

Marvin inquired again as to what number will be presented to the Council on inflation. Henrichsen believes that each fall, beginning in 2004, the staff will prepare a resolution that would add inflation to the impact fees for the Council's consideration. The City Council can decide whether they want to add inflation or not. If the Council chooses not to add inflation, Marvin wanted to know what number would be presented the following year. Henrichsen assumes that if they fail to add it one year, it could be added the next year. Steward ruled this discussion as nothing but speculative.

Main motion, with amendment as submitted by staff today, and with amendment to reinstate, "Such adjustments in such fees shall become effective upon approval by resolution of the City Council", carried 8-0: Larson, Carlson, Bills-Strand, Marvin, Duvall, Taylor, Krieser and Steward voting 'yes'.

PROPOSED AMENDMENTS TO IMPACT FEE ORDINANCE

A. "Section 6. That Title 27 of the Lincoln Municipal Code be amended by adding a new section numbered 27.82.060 to read as follows:

27.82.060 Exemptions From Impact Fees.

(a) Exemptions From All Impact Fees. The following types of development shall be exempted from payment of all impact fees otherwise due pursuant to this ordinance:

(1) Replacement of a destroyed or partially destroyed residential building or structure with a new building or structure of the same use, and with the same number of residential units, provided that the rebuilding or replacement occurs no later than fifteen years after the demolition or removal of the previous structure.

(2) Replacement of a destroyed or partially destroyed nonresidential building or structure with a new building or structure of the same gross floor area and use, provided that the rebuilding or replacement occurs no later than fifteen years after the demolition or removal of the previous structure.

(3) Installation or replacement of a mobile home on a lot or site where all impact fees for such lot or site have previously been paid pursuant to this ordinance or where a mobile home legally existed on such lot or site on or prior to June 2, 2003.

(4) Room additions, remodeling, rehabilitation or other improvements to an existing structure, provided that there is no increase in the number of dwelling units for residential use or in the amount of gross square footage for nonresidential use.

(5) Construction pursuant to a building permit issued based upon a complete application filed with the City prior to June 2, 2003, provided the construction proceeds according to the terms of the building permit. If said building permit application expires, application for a new building permit shall be treated the same as a new development. A building permit application shall not be deemed to be complete until the application, together with all required attachments, information, or other accompanying documents, are filed with the City.

(6) Low Income Owner-Occupied Housing.

(i) An Owner-Occupied unit which is sold to a household whose income is 60% or less of the area median gross income adjusted for a household size shall be entitled to a 100% exemption from all Impact Fees.

(ii) An Owner-Occupied unit which is sold to a household whose income is more than 60% but is 80% or less of the area median gross income adjusted for a household size shall be entitled to a 50% exemption from all Impact Fees.

(7) Low Income Rental Housing located outside of a low or moderate income area.

(i) A Tenant-Occupied unit which is restricted to rental to a household whose income is 60% or less of the area medium gross income adjusted for household size shall be entitled to a 100% exemption from all Impact Fees.

1 (ii) A Tenant-Occupied unit which is restricted to rental to a
2 household whose income is 80% or less of the area medium gross income adjusted for a
3 household size shall be entitled to a 50% exemption from all Impact Fees.

4 (8) Development or construction by any governmental entity for which the
5 governmental entity has the statutory power of eminent domain shall not pay any impact fees
6 since these entities are exempt from local zoning.

7 (9) Development or construction by the Housing Authority of the City of
8 Lincoln pursuant to the Nebraska Housing Agency Act.

9
10 (b) Exemptions From Specific Impact Fees. The following types of projects shall
11 be exempted from the following types of impact fees:

12 (1) Development, pursuant to a written agreement or other approval
13 between the City and a developer which was entered into prior to June 1, 2002, and which
14 specifically included or required the participation by the developer in the financing or
15 construction of the Impact Fee Facilities for the approved development shall be exempt from
16 the impact fee charged for those specific types of Impact Fee Facilities the developer agreed
17 to finance or construct in whole or in part. Amendment, modification, or other changes to
18 the approved development will be subject to the imposition of impact fees in accordance with
19 the provisions of Section 27.82.050. Agreements or other approvals qualifying for such
20 exemptions are listed in Table 27.82.060(b) at the end of this chapter. The Impact Fee
21 Administrator shall determine whether or not any other agreement or other approval qualifies
22 for an exemption.

23 (2) Where the Bureau of Fire Prevention requires that a water meter be
24 increased in size above that required for the ordinary usage of a building or other facility for
25 the purposes of maintaining fireflow to internal lines, the water and wastewater fees for that
26 building or other facility shall be based on the meter size that would be required without
27 regard to the fireflow requirements.

28 (3) Any separate water meter connected only to an irrigation system and not
29 to any building or other facility designed for human occupancy shall not be included in the
30 calculation of the wastewater impact fee.

31 (4) Other types of development shall be exempted from payment of specific
32 impact fees otherwise due pursuant to this ordinance if the person applying for a permit for
33 such development or the person seeking to engage in such development for which no permit
34 is required can demonstrate that the proposed land use and development will produce no
35 additional demand for a specific Impact Fee Facility beyond what was generated from such
36 site prior to the proposed development, using an average cost (not marginal cost)
37 methodology. The fact that a proposed development has direct access to, or is located close
38 to, an existing facility of the type covered by an impact fee, shall not by itself be evidence that
39 the proposed development will have no impact on the need for Impact Fee Facilities of the
40 type covered by the impact fee.

41
42 (c) Request for Exemption Required. If a permit is required for the proposed
43 development, any such claim for exemption must be made no later than the date of the

1 application for the permit for the proposed development except that a claim of exemption for
2 Low-Income Owner-Occupied Housing ~~or Low-Income Rental Housing~~ must be made no
3 later than ~~30~~ 60 days following the date the housing is first occupied. If the issuance of a
4 permit is not required for the development, then any such claim for exemption must be made
5 no later than the occurrence of any one of the following events, whichever occurs first:

- 6 (1) Completion of any connection to the City's water and wastewater
7 systems; or
8 (2) The date when any part of the development opens for business or goes
9 into use.

10 Any claim for exemption not made at or before that time provided above shall
11 be deemed waived.

12
13 (d) Determination of Validity. The Impact Fee Administrator shall determine the
14 validity of any claim for exemption pursuant to the criteria set forth in this ordinance. ~~An~~
15 ~~exemption for Low-Income Owner-Occupied Housing or Low-Income Rental Housing shall~~
16 ~~not become valid until after the City receives verification that such housing is occupied by~~
17 ~~an eligible household.~~

18
19 (e) Funding of Exemptions. The proportionate share of any Impact Fee Facility or
20 Impact Fee Facility Improvement cost directly related to the exemptions granted pursuant to
21 Subsection (a)(6), (7), and (8) above shall be funded from a revenue source other than impact
22 fees."

23
24 B. "Section 7. That Title 27 of the Lincoln Municipal Code be amended by adding
25 a new section numbered 27.82.070 to read as follows:

26
27 **27.82.070 Impact Fee Funds.**

28 (a) Creation of Benefit Districts. Impact fees shall be spent only within the benefit
29 district in which they were collected, except that (1) water system impact fees, water
30 distribution impact fees, and wastewater impact fees may be spent for water system impact
31 fee facility improvements, water distribution impact fee facility improvements, and wastewater
32 impact fee facility improvements, respectively, outside the corporate limits of the City which
33 benefit the district in which they were collected; and (2) any arterial street used as a boundary
34 between two arterial street benefit districts shall be considered as included within both benefit
35 districts and may be improved with fees collected in either benefit district. The following
36 benefit districts are hereby created:

37 (1) Water System Impact Fee Benefit District shall be the area served by the
38 Lincoln water system;

39 (2) Water Distribution Benefit District Nos. 1 through 7, inclusive, shall be
40 the respective incorporated areas of the City established and shown on the Water Distribution
41 Impact Fee Benefit Areas Map as Water Distribution Benefit Area Nos. 1 through 7, inclusive.

42 (3) Wastewater Impact Fee Benefit District shall be the area served by the
43 Lincoln Wastewater System;

(4) Arterial Street Impact Fee Benefit District Nos. 1 through 7, inclusive, shall be the respective incorporated areas of the City established and shown on the Arterial Street Impact Fee Benefit Areas Map as Arterial Street Benefit Area Nos. 1 through 7, inclusive, except for that portion of the Downtown/Antelope Valley Exclusion Area located within any of areas.

(5) Neighborhood Park and Trail Impact Fee Benefit District Nos. 1 through 7, inclusive, shall be the respective incorporated areas of the City established and shown on the Neighborhood Park and Trail Impact Fee Benefit Areas Map as Neighborhood Park and Trail Benefit Area Nos. 1 through 7, inclusive, except for that portion of the Neighborhood Park and Trail Impact Fee Exclusion Area located within said areas.

(b) Creation of Impact Fee Fund. An Impact Fee Fund is hereby created and shall include a separate impact fee account for each impact fee benefit district as an interest bearing account distinct from the General Fund of the City:

(c) Monies in an Impact Fee Account. Each impact fee account shall contain only those impact fees collected pursuant to this ordinance for the types of Impact Fee Facilities reflected in the title of the account plus any interest which may accrue from time to time on such amounts.

~~(e)~~(d) Use of Monies in an Impact Fee Account. The monies in each impact fee account shall be used only:

(1) To acquire or construct Impact Fee Facilities or Impact Fee Facility Improvements of the type reflected in the title of the account and in the location specified in Section 27.82.070(a); or

(2) As described in Section 27.82.080 (Refunds) or as described in Section 27.82.090 (Post-Ordinance Agreements), or as described in Section 27.82.100 (Pre-Ordinance Reimbursements), or

(3) To retire bonds, or other obligations of indebtedness issued to fund the construction of Impact Fee Facility Improvements.

(4) To pay consultant fees to update the impact fees.

(5) To pay the expenses of collecting the fee and administering this ordinance, except that no more than two percent (2%) of the impact fees collected may be used to compensate the City for such expenses. In the case of refunds of impact fees under Section 27.82.080, or reimbursements under Sections 27.82.090 and 27.82.100, the City shall be entitled to retain up to two percent (2%) of the impact fee payments made by the applicant or the reimbursement due the applicant as payment for the expenses of processing the refund or reimbursement request."

C. "Section 8. That Title 27 of the Lincoln Municipal Code be amended by adding a new section numbered 27.82.080 to read as follows:

27.82.080 Refunds of Impact Fees Paid.

1 (a) Passage of Time. Any monies in any impact fee account that have not been
2 spent or encumbered within eight years after the date on which such fee was paid shall, upon
3 application to the Impact Fee Administrator by the fee payor, be returned to such person with
4 interest since the date of payment at the rate earned by the City on the fees. Fees shall be
5 deemed to be spent on the basis that the first fee collected shall be the first fee spent. Within
6 six months of the end of the eight-year period from the date on which the unspent impact fee
7 was paid, the Impact Fee Administrator shall notify the fee payor of eligibility for a refund at
8 the address listed with the Impact Fee Administrator. In order to receive such refund, the fee
9 payor shall be required to submit an application for such refund within twelve months after
10 the expiration of such eight-year period. Any monies in an impact fee account for which no
11 application for a refund has been timely made shall be retained by the City and expended on
12 the type of Impact Fee Facilities reflected in the title of the account without further limitation
13 as to time of expenditure.
14

15 (b) Expiration of Permit. If a person has paid an impact fee required by this
16 ordinance and has obtained a building permit or any other permit for a development or
17 extensions thereto, and the permit or extension for which the fee was paid later expires
18 without the possibility of further extension, and the development activity for which the impact
19 fee was imposed did not occur and no impact has resulted, then such fee payor shall be
20 entitled to a refund of the fee paid, with interest. In order to be eligible to receive such
21 refund, such fee payor shall be required to submit an application for such refund within six
22 months after the expiration of the permit or extension for which the fee was paid.
23

24 (c) Approval of Owner Occupied Low Income Housing Exemption. If, after an
25 impact fee has been paid pursuant to this ordinance for a development which subsequently
26 qualifies for an Owner Occupied Low Income Housing Exemption pursuant to Section
27 27.82.060(a)(6), then such fee payor shall be entitled to a reimbursement of the fee paid,
28 without interest. In order to be eligible to receive such reimbursement, such fee payor shall
29 be required to submit an application for such exemption and reimbursement no later than 60
30 days following the date such housing is first occupied.
31

32 (c)(d) No Refund for Altered Development. After an impact fee has been paid
33 pursuant to this ordinance, no refund of any part of such fee shall be made if the development
34 for which the fee was paid is later demolished, destroyed, or is altered, reconstructed, or
35 reconfigured so as to reduce the size of the development, the number of units in the
36 development, or the amount of traffic generated by the development.
37

38 (d)(e) Notice to Fee Payor. At the time of payment of any impact fee under this
39 ordinance, the Impact Fee Administrator shall provide the person paying such fee with
40 written notice of those circumstances under which refunds of such fees will be made. Failure
41 to deliver such written notice shall not invalidate any collection of any impact fee under this
42 ordinance."
43

1 D. "Section 11. That Title 27 of the Lincoln Municipal Code be amended by
2 adding a new section numbered 27.82.110 to read as follows:

3
4 **27.82.110 Miscellaneous Provisions.**

5 (a) Interest. Interest earned on monies in any impact fee account shall be
6 considered part of such account, and shall be subject to the same restrictions on use
7 applicable to the impact fees deposited in such account.

8
9 (b) First-In/First-Out Accounting. Monies in each impact fee account shall be
10 considered to be spent in the order collected, on a first-in/first-out basis.

11
12 (c) No Operation or Maintenance. No monies from any impact fee account shall
13 be spent for periodic or routine operation or maintenance of any facility of any type.

14
15 (d) No Restriction on Development Conditions. Nothing in this ordinance shall
16 restrict the City from requiring a person to construct reasonable project improvements
17 required to serve such person's project, whether or not such improvements are of a type for
18 which reimbursements are available under Section 27.82.090.

19
20 (e) Records. The Impact Fee Administrator shall maintain accurate records of the
21 impact fees paid, including the name and address of the person paying such fees, the project
22 for which the fees were paid, the date of payment of each fee, the amounts received in
23 payment for each fee, and any other matters that the Impact Fee Administrator deems
24 appropriate or necessary to the accurate accounting of such fees, and such records shall be
25 available for review by the public during City business hours.

26
27 (f) Assignment of Impact Fee Account Monies. The approved Capital Improvement
28 Program which includes any Impact Fee Facilities scheduled for construction shall assign
29 monies to fund in whole or in part such Impact Fee Facilities from the Impact Fee Fund
30 Account of the type for which the fees in that account were paid. Any monies, including any
31 accrued interest, not assigned to specific projects within such capital improvements program
32 and not expended pursuant to Section 27.82.080 (Refunds) or 27.82.090 (Reimbursements)
33 shall be retained in the same impact fee account until the next fiscal year.

34
35 ~~(g) Administrative Costs. The City shall be entitled to collect an additional charge~~
36 ~~of not more than two percent of each impact fee collected as payment for the expenses of~~
37 ~~collecting the fee and administering this ordinance. In the case of refunds of impact fees~~
38 ~~under Section 27.82.080, or reimbursements under Sections 27.82.090 and 27.82.100, the~~
39 ~~City shall be entitled to retain not more than two percent of the impact fee payment made by~~
40 ~~the applicant or the reimbursement due to the applicant as payment for the expenses of~~
41 ~~processing the refund or reimbursement request.~~
42

1 ~~(h)~~(g) Mistake or Misrepresentation. If an impact fee has been calculated and paid
2 based on a mistake or misrepresentation, it shall be recalculated. Any amounts overpaid by
3 a person shall be refunded by the City to such person within thirty days after the City's
4 acceptance of the recalculated amount, with interest since the date of such overpayment at
5 the rate earned by the City on the funds. Any amounts underpaid by such person shall be
6 paid to the City within thirty days after the Impact Fee Administrator's acceptance of the
7 recalculated amount, with interest since the date of such underpayment at the rate then
8 earned by the City on its impact fee funds. In the case of an underpayment to the City, the
9 City may refuse to issue any additional permits or approvals for the project for which the
10 impact fee was previously underpaid until such underpayment is corrected, and if amounts
11 owed to the City are not paid within such thirty-day period, the City may also repeal any
12 permits issued in reliance on the previous payment of such impact fee and refund such fee
13 to the then current owner of the land.

14
15 ~~(i)(h)~~ Discretion to Reduce Reimbursement of Impact Fees to Promote Economic
16 Development. In order to promote the economic development of the City, ~~or the public~~
17 ~~health, safety, and general welfare of its residents, the City Council by an affirmative vote of~~
18 ~~at least five of its members may agree to pay~~ the City shall reimburse a developer for some
19 or all of the arterial street impact fees imposed on a proposed development or redevelopment
20 from other funds of the City that are not restricted to other uses. Any such decision to pay No
21 such reimbursement of arterial street impact fees on behalf of a proposed development shall
22 be at the discretion of the City Council and shall be made pursuant to goals and objectives
23 adopted by the City Council to promote such development shall be made except in
24 conformance with specific economic development criteria and qualifications adopted by
25 resolution of the City Council which, if met, entitle a developer to a reimbursement of some
26 or all of the arterial street impact fees imposed on the development.

27
28 ~~(j)(i)~~ Appeals. Any determination made by any official of the City charged with the
29 administration of any part of this ordinance may be appealed by the aggrieved party to the
30 City Council by filing (1) a written Notice of Appeal on a form provided by the City, and (2)
31 a written explanation of why the appellant feels that a determination was in error. Appeals
32 must be filed with the City Clerk within ten days after the determination for which the appeal
33 is being filed. At the regular meeting following the filing of the appeal, the City Council shall
34 fix a time and place for hearing the appeal, and the City Clerk shall mail notice of the hearing
35 to the appellant at the address given in the Notice of Appeal. The hearing shall be conducted
36 at the time and place stated in such notice given by the City Council. In an appeal of an
37 impact fee, the Council shall not waive the fees, although the fees may be reduced pursuant
38 to subsection ~~(h)~~(h) above or may be reduced upon a finding that the impact fee was
39 incorrectly calculated, or that unusual circumstances of the development demonstrate that
40 application of the fee to the development would be unfair or unjust. The City Council shall
41 make specific and detailed findings of fact with respect to each controverted issue on appeal.
42 The determination of the City Council shall be final.

1 ~~(k)(j)~~ Periodic Review. The impact fees and the administrative procedures established
2 by this ordinance shall be reviewed at least once every three fiscal years to ensure that:

3 (1) The demand and cost assumptions underlying such fees are still valid,
4 (2) The resulting fees do not exceed the actual cost of constructing Impact
5 Fee Facilities of the type for which the fee was paid and that are required to serve new
6 development,

7 (3) The monies collected or to be collected in each impact fee fund have
8 been or are expected to be spent for Impact Fee Facilities of the type for which such fees were
9 paid, and

10 (4) That such Impact Fee Facilities will benefit those developments for
11 which the fees were paid.

12
13 ~~(h)(k)~~ Adjustments for Inflation. Beginning on January 1, 2005, and on January 1 of
14 each following year unless and until the impact fee schedules are otherwise revised or
15 replaced by City Council, each fee amount set forth in each schedule shall be adjusted to
16 reflect the effects of inflation on those costs set forth in the Impact Fee Study by multiplying
17 such amount by a fraction, the numerator of which is the U.S. Consumer Price Index for All
18 Items for the most recent ~~period for which figures are available~~ month of August, and the
19 denominator of which is U.S. Consumer Price Index for All Items for the period one year prior
20 to the period reflected in the numerator. ~~Such adjustments in such fees shall become effective~~
21 ~~upon approval by resolution of the City Council.~~

22
23 ~~(m)(l)~~ Violations. Violation of this ordinance shall be a misdemeanor and shall be
24 subject to those remedies provided in Section 27.81.070. Knowingly furnishing false
25 information to any official of the City charged with the administration of this ordinance on
26 any matter relating to the administration of this ordinance, including without limitation to
27 knowingly furnishing false information regarding the expected size, use, or traffic impacts
28 from a proposed development, shall be a violation of this ordinance. In addition to or in lieu
29 of any criminal prosecution, the City or any person applying for a permit of the types
30 described in Section 27.82.050(a) or any person seeking to engage in a development for
31 which no permit is requested shall have the right to sue in civil court to enforce the provisions
32 of this ordinance."
33

34 E. "Section 16. That the Downtown/Antelope Valley Exclusion Area Map, the
35 Water Distribution Impact Fee Benefit Areas Map, the Arterial Street Impact Fee Benefit Areas
36 Map, and the Neighborhood Park and Trail Impact Fee Benefit Areas Map, attached hereto
37 marked as Exhibit Nos. 1 through 4, are hereby adopted and incorporated herein by
38 reference, and that Exhibit Nos. 1 through 4 be codified in Chapter 27.82 of the Lincoln
39 Municipal Code as Appendixes 1 through 4, respectively."

40
41 F. "Section 17. The Lincoln Impact Fee Study prepared by Duncan Associates
42 attached hereto and marked as Exhibit No. 5 is hereby adopted and incorporated herein by
43 reference, except that (1) Table 4, "Arterial Street Cost Per Mile," on Page 12 of the Lincoln

1 Impact Fee Study is hereby amended to exclude sidewalks, water and wastewater line
2 adjustments and to reduce the number of units for "Full Intersection Traffic Signals" from 3.5
3 to 1.5 units per mile in determining the total cost per mile for a four-lane arterial as shown
4 on Attachment A; (2) the text on Page 12 of the Lincoln Impact Fee Study is hereby amended
5 to delete the following paragraph:

6 *It should be noted that developers are currently required to make some*
7 *of these improvements, such as installing sidewalks on adjacent arterials.*
8 *By including these components in the fee, developers will either not be*
9 *required to make these improvements, or else they will be given credit*
10 *for the value of such improvements against the arterial street impact fee.*

11 and (3) any other text in said study which may be affected by the above-specified
12 amendments be and they are hereby amended to conform with such specific amendments.
13 One printed copy of the above Impact Fee Study has been filed in the office of the City Clerk
14 for use and examination by the public."

15
16 G. "Section 20. ~~That this ordinance shall be in full force and effect as of June 2,~~
17 ~~2003, after its passage and publication according to law.~~ Pursuant to Article VII, Section 7
18 of the City Charter, this ordinance shall be posted on the official bulletin board of the City in
19 lieu of and in place of newspaper publication with notice of passage and such posting to be
20 given by publication one time in the official newspaper by the City Clerk. This ordinance
21 shall take effect and be in force and effect as of June 2, 2003 from and after its passage and
22 publication as herein and in the City Charter provided."

23
24 Pursuant to Article VII, Section 7 of the City Charter, this ordinance shall be posted on
25 the official bulletin board of the City in lieu of and in place of newspaper publication with
26 notice of passage and such posting to be given by publication one time in the official
27 newspaper by the City Clerk. This ordinance shall take effect and be in force from and after
28 its passage and publication as herein and in the City Charter provided.
29

(b) Exemptions From Specific Impact Fees. The following types of projects shall be exempted from the following types of impact fees:

(1) Development, pursuant to a written agreement or other approval between the City and a developer which was entered into prior to June 1, 2002, and which specifically included or required the participation by the developer in the financing or construction of the Impact Fee Facilities for the approved development shall be exempt from the impact fee charged for those specific types of Impact Fee Facilities the developer agreed to finance or construct in whole or in part. ~~Agreements or other approvals qualifying for such exemptions are listed in Table 27.82.060(b) at the end of this chapter.~~ The Impact Fee Administrator shall determine **in writing** whether or not any other agreement or other approval qualifies for an exemption. **The Impact Fee Administrator shall maintain a record of the agreements or other approvals that qualify for category exemptions. A copy of said record shall be filed in the Office of the City Clerk.**

Notwithstanding the above, the exemption shall not apply to any amendment, modification, or change to the approved development to allow a change of use, an increase in meter size, an increase in the amount of gross square footage for nonresidential use, or an increase in the number of dwelling units for residential use that increases the impact on the Impact Fee Facility in question. In such case, the fee shall be based on the net increase in the fee for the new use, meter size, gross square footage for nonresidential use or number of dwelling units for residential use as compared to the previous use, meter size, gross square footage for nonresidential use and number of dwelling units for residential use.

(2) Where the Bureau of Fire Prevention requires that a water meter be

PIERSON, FITCHETT, HUNZEKER, BLAKE & KATT

Law Firm

COPY

Gary L. Aksamit
William G. Blake
Thomas J. Fitchett
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ITEM #4.4a.1 CHANGE OF ZONE NO. 3399

Writer's email address:
lawkatt@pierson-law.com

(p.87 - Cont'd Public Hearing - 11/12/03)

October 27, 2003

Hand Delivery

Michaela Hansen, Impact Fee Administrator
Public Works and Utilities Department
555 South 10th Street, Suite 203
Lincoln, NE 68508

Re: Impact Fee Ordinance Amendments - Change of Zone No. 33399

Dear Michaela:

This letter will follow-up on our phone conversation from last Friday afternoon regarding the above matter. I called you on behalf of the REALTORS® Association of Lincoln to discuss the expansion of the current impact fee exemption to include all low-income purchasers not just those utilizing government programs. The REALTORS® believe that the owner-occupied exemption from impact fees should apply to all low-income individuals regardless of the method utilized to finance the purchase of a home.

During our conversation, you indicated that it was your understanding that the proposed amendments were intended to accomplish this change among others. Upon further review during our discussion, however, it appears that an additional amendment may be necessary to accomplish this change. In particular, the Low Income Owner-Occupied Housing definition in the Ordinance needs to be changed to delete the following language: "under local, state or federal regulations." You were going to inquire with other City staff to see if this additional change might be made as a part of these amendments.

The REALTORS® wanted you and the rest of City staff to be aware of their position prior to this Wednesday's public hearing in front of Planning Commission. It is my understanding that the current President of the REALTORS®, Mr. Bill Newstrom, will be making their presentation. I also should be in attendance at the hearing, and either Bill or myself would be glad to answer any questions that you or other City Staff may have. Please feel free to call me in advance of the hearing if any questions arise before then.

Sincerely,



Peter W. Katt
For the Firm

PWK:sb

cc: Stephen Henichsen, Planning Department
Bill Newstrom
Douglas H. Rotthaus

(G:\WPData\PK\Realtors Assoc - Hansen 10-27-3.ltr.wpd)

LYNN E. MOORER

ATTORNEY AT LAW

404 South 27th Street, Lincoln, NE 68510
Phone 402.474.2186; Fax 402.474.1911
E-mail lmoorer@alltel.net

12 November 2003

Lincoln / Lancaster County Planning Commission
555 S. 10
Lincoln, NE 68508

Re: Change of Zone #3399 to amend Ordinance No. 18113 relating to impact fees;
Miscellaneous No. 03012 adopting Criteria for the City of Lincoln for the Reimbursement
of Impact Fees for Economic Development

Dear Commissioners:

Examination of the proposed amendment to the impact fee ordinance and adoption of the criteria for arterial street impact fee reimbursement for economic development reveals several legal and policy issues of concern.

I. Legal Issues

Analysis indicates that there are legal impediments to City of Lincoln administration of the proposed criteria for arterial street impact fee reimbursement by piggybacking on the administration of the state Employment and Investment Growth Act (better known as "LB 775") as currently provided in the proposed criteria and as described by City staff members.

A. Confidentiality of LB 775 Information

LB 775 severely limits the information that may be made public regarding individual businesses seeking benefits under its program.

Section 77-4104(2)(e) of the Nebraska statutes, R.S.Supp., 2002 provides, in part:

The application [for an agreement with the Tax Commissioner for benefits in the Employment and Investment Growth Act] and all supporting information shall be confidential except for the name of the taxpayer, the location of the project, the amounts of increased employment and investment, and the information required to be reported by sections 77-4110 and 77-4113.

Section 77-4110, Neb. Rev. Stat. (Reissue 1996), spells out the requirement for the Tax Commissioner to publish an annual report and the report's contents:

(1) The Tax Commissioner shall submit an annual report to the Legislature no later than March 15 of each year.

(2) The report shall list (a) the agreements which have been signed during the previous calendar year, (b) the agreements which are still in effect, (c) the identity of each taxpayer, and (d) the location of each project.

(3) The report shall also state *by industry group* (a) the specific incentive options applied for under the Employment and Investment Growth Act, (b) the refunds allowed on the investment, (c) the credits earned, (d) the credits used to reduce the corporate income tax and the credits used to reduce the individual income tax, (e) the credits used to obtain sales and use tax refunds, (f) the number of jobs created, (g) the total number of employees employed in the state by the taxpayer on the last day of the calendar quarter prior to the application date and the total number of employees employed in the state by the taxpayer on subsequent reporting dates, (h) the expansion of capital investment, (i) the estimated wage levels of jobs created subsequent to the application date, (j) the total number of qualified applicants, (k) the projected future state revenue gains and losses, (l) the sales tax refunds owed to the applicants, (m) the credits outstanding, and (n) the value of personal property exempted by class in each county (emphasis supplied).

(4) No information shall be provided in the report that is protected by state or federal confidentiality laws.

(5) By December 1, 1990, the Department of Revenue shall prepare a report with the available information required in this section for all prior years the act has been in effect. Information required in this section that is not available to the department for the report due December 1, 1990, shall be provided in the next annual report.

Section 77-4113, Neb. Rev. Stat. (Reissue 1996), requires the Nebraska Department of Revenue to estimate sales tax refunds periodically:

The Department of Revenue shall, on or before the fifteenth day of October and February of every year and the fifteenth day of April in odd-numbered years, make an estimate of the amount of sales tax refunds to be paid under the Employment and Investment Growth Act during the fiscal years to be forecast under section 77-27,158. The estimate shall be based on the most recent data available including pending and approved applications and updates thereof as are required by subdivisions (2)(e) and (4)(e) of section 77-4104. The estimate shall be forwarded to the Legislative Fiscal Analyst and the Nebraska Economic Forecasting Advisory Board and made a part of the advisory forecast required by section 77-27,158.

Thus, the only public information available about specific companies, which the Nebraska Department of Revenue publishes in annual reports, is:

1. The original name of the company signing an LB 775 agreement (the "taxpayer");
2. The project location (by city, county, or "statewide" designation);
3. Levels of *promised* investment and *promised* new jobs (e.g., \$3 million / 30 jobs); and
4. The year(s) the LB 775 agreement is in effect.

First, it is important to note that this information reflects only that a business has *applied* for LB 775 benefits. No information is released by the Department of Revenue regarding whether a business has *qualified* for benefits or whether qualification has been *maintained* for any period of time.

Second, no information is published regarding the *actual* amount of benefits received by any company. Furthermore, no information is provided regarding the *actual* number of new jobs created. Only aggregated data and projections are published in the annual report.

Review of Department of Revenue annual reports shows that the following key features in the City's proposal are not public information as they pertain to LB 775:

1. Qualification for LB 775 benefits at either the \$3-million-and-30-new-employees threshold or the \$10-million-and-100-new-employees threshold (City Criteria Section 2);
2. Maintenance of levels for three consecutive years (City Criteria Section 2);
3. \$12.99 / hour average base-minimum wage (City Criteria Section 1(4)); and
4. Completion of the project (City Criteria Section 4(4)).

(For example, the Nebraska Department of Revenue's 2002 annual report on LB 775 is available at http://www.revenue.state.ne.us/incentiv/02an_rep/02_annrp.htm.)

LB 775's confidentiality provisions mean that the Department of Revenue cannot share with the City any more information than that which is published in the annual report. This conclusion was confirmed by Department of Revenue personnel Mary Hugo, Kate Knapp, Bob Hill, and Tom Gillespie during individual telephone interviews. A memorandum of understanding between the City and State regarding sharing of information cannot be legally entered into. Therefore, such a memorandum is not a viable method of getting around LB 775's confidentiality strictures, a fact confirmed by the head of the Department of Revenue's legal division, Tom Gillespie.

Mr. Gillespie stated that the Department of Revenue may share information regarding an individual company with anyone possessing a power of attorney from the company. He noted, however, that few businesses would be willing to give another government agency a power of attorney. Thus, it seems impractical to rely upon use of powers of attorney for the City to implement the proposed plan for reimbursement of impact fees. Furthermore, because a power of attorney is a legal tool used by a principal to confer authority on a chosen agent to act in the principal's behalf, the City cannot require any business to provide a power of attorney to the Department of Revenue or any other person or governmental agency.

The City plan deals with one of the four key features for eligibility – qualification for LB 775 benefits – by requiring a company to provide the City a confirmation letter from the Department of Revenue indicating successful application for LB 775 incentives (City Criteria Sections 4(2)(b), 10, and 11). Handling it in this manner has two major shortcomings. First, a letter supplied by a company attesting to its meeting these requirements is not objectively verifiable by the City. Second, it is a poor regulatory procedure that opens up the possibility of fraud and abuse (by relying solely upon documents supplied by the regulated company). The City plan does not address how the other three key features for eligibility – maintenance of levels for three consecutive years, a \$12.99 / hour average base-minimum wage, and completion of the project – will be determined. In any event, the City cannot look to the State to provide this information.

Finally, because qualification for LB 775 benefits is confidential information with the Department of Revenue, it is not clear how the City will be able to determine when reimbursement should be disallowed, as provided in City Criteria Section 7.

B. The Nebraska Department of Revenue cannot administer the City plan.

If the City chooses to pursue an impact fee reimbursement plan, it has the authority to administer it itself. This may require more resources for administration than one staff member as currently envisioned. But the City cannot rely upon the Department of Revenue to administer any part of the

City plan for them, as currently proposed ("rely[ing] upon verification measures established by the Nebraska Department of Revenue unless otherwise noted in the context of these Criteria," City Criteria Recital II) and explained by City staffers.

The reimbursement of impact fee proposal appears to rely heavily upon State administration of a City plan – activity that exceeds the State's authority. Mr. Gillespie of the Department of Revenue has confirmed that without a change in Nebraska law, the Department of Revenue does not have authority to administer any part of the proposed plan for the City of Lincoln. In addition, the Criteria do not note specific verification procedures by the City for the following unique features.

1. \$12.99 / hour average base-minimum wage (City Criteria Section 1(4)).

LB 775 does not contain any wage requirements. Nor does it contain any distinctions regarding types of jobs that receive credits.

The key requirements for receiving LB 775 benefits pertain to:

1. Types of activities a business can be engaged in to qualify for benefits (R.S.Supp., 2002, Section 77-4103(11));
2. Number of new employees hired (e.g., 30 employees or 100 employees) (R.S.Supp., 2002, Sections 77-4104(3) and 77-4105(2));
3. Levels of investment for a project (e.g., \$3 million, \$10 million, or \$20 million) (*Id.*);
4. Deadline for meeting these qualifying requirements (i.e., within seven years of application)(R.S.Supp., 2002, Section 77-4104(3));
5. Time limit for entitlement to benefits (i.e., six tax years after qualification)(R.S.Supp., 2002, Section 77-4103(5));
6. Time limit for carrying over tax credits (i.e., eight tax years)(R.S.Supp., 2002, Section 77-4106(1)(c));
7. Providing the Department of Revenue application information and agreeing to provide updating information annually on any changes in plans or circumstances which affect the timetable of sales tax refunds set out in the application (R.S.Supp., 2002, Sections 77-4104(2) and 77-4104(4)(e)); and
8. Signing an agreement with the Department of Revenue to complete the project (R.S.Supp., 2002, Section 77-4104(4)).

Thus, wage is not a criterion for qualification under LB 775. The *only* provision in LB 775 regarding wage levels pertains to the requirement that the Department of Revenue estimate wage levels of jobs created subsequent to the application date and publish this aggregated information in an annual report. LB 775 contains no requirement regarding *qualified jobs*; there are only *qualified projects* under LB 775.

Department of Revenue personnel Mary Hugo and Kate Knapp have confirmed this analysis regarding wages. They indicate that no distinctions are made for LB 775 among high-paying and low-paying jobs. Thus, they do not review job titles to identify "blue-collar" or "pink-collar" jobs. Rather, the State reviews job titles only with respect to the physical nature of the work done in order to determine whether the jobs fall in industry sectors covered by LB 775 (R.S.Supp., 2002, Section 77-4103(11)). Therefore, salaries of high-paying executives and wages of low-paying workers at a project are averaged together by the Department of Revenue.

Since wage is not a criterion under LB 775, the City cannot look to the State to determine whether the City's proposed requirement of \$12.99 / hour average base-minimum wage has been met. This is not a feature that matters to the Department of Revenue with respect to eligibility. Furthermore, even

though the State does track employee wages so that it can report aggregated data in its annual report, LB 775's confidentiality provisions preclude the State from sharing any of this information with the City.

2. Maintenance of threshold for three consecutive years (City Criteria Section 2).

As noted above, the key timeframes under LB 775 are:

1. Deadline for qualifying (i.e., within seven years of application)(R.S.Supp., 2002, Section 77-4104(3));
2. Time limit for entitlement to benefits (i.e., six tax years after qualification)(R.S.Supp., 2002, Section 77-4103(5)); and
3. Time limit for carrying over tax credits (i.e., eight tax years)(R.S.Supp., 2002, Section 77-4106(1)(c)).

The Department of Revenue does not routinely ascertain or verify after three years that qualification requirements have been maintained. This is another feature that does not normally matter to the State under LB 775. According to Bob Hill of the Department of Revenue, the State only conducts an audit of an LB 775 company "when we think there's a risk that they're not maintaining. For example, if we read in the newspaper that a company is going bankrupt, we become interested." This means that the City cannot look to the State to determine whether an LB 775 company has maintained required levels for three consecutive years. As with tracking the employee-wage feature, even if the State did track maintenance of levels for three consecutive years, the State would be precluded from sharing this information with the City because of LB 775's strict confidentiality requirements.

I recommend that the Planning Commission confirm this information and analysis by seeking information directly from Department of Revenue personnel regarding their administration of LB 775 through either written or oral testimony. It seems important that if the Planning Commission desires to continue consideration of this proposal, the Commission should obtain key information firsthand from the Department of Revenue rather than relying upon secondhand characterizations of the State's administration of LB 775. This is particularly important since the information I have obtained from Department of Revenue personnel and my analysis of the statutes do not jibe with key characterizations made by City staff members.

C. Technical problems in language drafted

In addition to the legal issues noted above, several technical problems in the language of the City proposal are evident.

1. The City plan does not address how three key features for eligibility – maintenance of levels for three consecutive years, a \$12.99 / hour average base-minimum wage, and completion of the project – will be determined. The proposal addresses only how successful *application* is confirmed, i.e., through a letter of confirmation from the Department of Revenue (City Criteria Sections 4(2)(b), 10, and 11). Because the three features are not addressed, the Criteria are ambiguous and vague and, therefore, may be unenforceable.

2. The definition of "entitlement period" (City Criteria Section 1(6)) is confusingly worded and unclear. This creates an enforceability problem.

3. The definition of "average wage of new employees" (City Criteria Section 1(12)) states it shall mean "the total dollars paid to new employees over the total number of hours during the audit

period at Lincoln, Nebraska Project". Because "audit period" is not defined, this language is ambiguous and vague and, therefore, probably unenforceable.

4. Section 14 of the City Criteria require the City Impact Fee Administrator to estimate annually reimbursements to be paid under the plan "based on the most recent data available including pending and approved applications and updates thereof as are required." The City Criteria do not specifically require updates, unlike LB 775 (which, in Section 77-4104(4)(e), requires annual updates by the business). Therefore, it is not clear that any business seeking reimbursement of impact fees must provide updating information to the City.

D. Difficulties in handling appeals

The appeals section of the current City Ordinance (27.82.110(j), being amended to (i)), requires the City Council to hear appeals regarding administration of impact fees. The Council is empowered to reduce fees "upon a finding that the impact fee was incorrectly calculated, or that unusual circumstances of the development demonstrate that application of the fee to the development would be unfair or unjust." For each appeal, the City Council is required to make "specific and detailed findings of fact with respect to each controverted issue on appeal."

If the proposed Criteria, which piggyback on LB 775, are adopted, the City Council may be handicapped in its ability to make specific and detailed findings of fact. In order to do this properly, the City Council may need access to detailed information that the Department of Revenue is prohibited from revealing under LB 775. Therefore, the adoption of the proposed Criteria could jeopardize the City's ability to carry out due process under the current ordinance.

II. Policy Issues

A. Incentives and reimbursement of impact fees are not in the Comprehensive Plan.

As the City Criteria staff report notes (page 3, paragraph 2 under "Analysis"), the Comprehensive Plan does not discuss incentives. Nor does the Plan mention reimbursement of impact fees. Furthermore, none of the references to the Comprehensive Plan cited in the staff reports support either incentives or reimbursement of impact fees as currently proposed.

Indeed, most references support *not* providing incentives through reimbursing impact fees. For example, page three of the staff report on the ordinance amendment cites page F 159 of the Comprehensive Plan: "The City and County need to adequately fund infrastructure maintenance and improvements in existing towns and neighborhoods." Reimbursement of impact fees clearly decreases funding for infrastructure maintenance and improvements.

For another example, page three of the staff report on the ordinance amendment cites from the Comprehensive Plan, as a guiding principle for financing urban infrastructure, "Both new and existing development should pay its fair share of improvement costs due to growth and maintenance." The current City proposal for reimbursement of impact fees would reduce the share paid by new and existing businesses for development without any demonstration whatsoever that it is needed to accomplish the development and that the benefits reaped from the reimbursement will sufficiently outweigh the cost. Thus, there is no mechanism currently envisioned within the City Criteria that demonstrates reimbursement of impact fees for development will mean any beneficiary is paying its fair share.

B. The City proposal repeats mistakes of LB 775.

The City's reimbursement of arterial street impact fees proposal repeats many of the mistakes of LB 775. After 16 years of operation, the following major flaws in LB 775 are widely evident – flaws that are replicated in the City plan.

1. Lack of cost-benefit analysis

Prior to enacting LB 775, a cost-benefit analysis was not conducted. Furthermore, throughout the 16-year life of this state tax incentive program no cost-benefit analysis has ever been completed. Nor is one required in LB 775. This has contributed to severe shortsightedness with respect to the program's actual costs and benefits.

The City proposal and its planning repeat these mistakes. This means that to this point the Planning Commission does not have any real idea of what the reimbursement of impact fees plan will cost the City of Lincoln and what benefits may be reaped. Proceeding without a cost-benefit analysis now and without a requirement for such analysis periodically throughout the life of the program is imprudent.

The City Economic Development Director has predicted that only a few companies a year will qualify for the reimbursement plan. However, there is no basis for this prediction. This same type of mistake was made with LB 775. The promoters of LB 775 predicted in 1987 that the program would be used 12 or 15 times, according to Lincoln Senator David Landis. (Nebraska Legislature floor debate on LB 608, March 17, 2003 at 2522). In reality, LB 775 has been used on almost 500 projects by more than 300 companies from 1987 through 2002 (Department of Revenue annual reports).

With respect to program cost, the City Economic Development Director has speculated that the proposal City reimbursement plan will cost \$500,000 over five years. However, he admits that this amount is simply a guess without any underlying analysis. A similar mistake was made with LB 775. The Legislative Fiscal Office predicted in 1987 that LB 775 tax refunds and credits would result in the loss to the General Fund of a mere \$3.87 million in 1987-88 and \$5.37 million in 1988-89. The Fiscal Office speculated that, after that point, "revenue losses might increase by several thousand dollars a year or more until leveling off by years 7 to 10." (LB 775 Fiscal Note, May 7, 1987) In reality, the current net cost to the state treasury from LB 775 income and sales tax credits is about \$77 million a year, according to the Legislative Fiscal Office. For the years 2002-2009, the net sales and income tax revenue loss from LB 775 totals about \$538 million.

The Planning Commission learned at its October 29, 2003 meeting that the analysis circulated by City staffers referencing Blane, Canada was not, in fact, done by Blane, Canada. Rather, the City Economic Development Director stated that it was put together by City staffers and is "pure speculation".

It is important that the City learn from the mistakes of LB 775 so that a documented City need is addressed by a plan tailored to Lincoln's characteristics and whose projected costs and benefits have been adequately assessed. Proceeding without an adequate cost-benefit analysis is dangerously shortsighted and may become very costly to the City.

2. Lack of accountability

The proposed plan lacks accountability for both the program administrators and beneficiaries. The City plan does not improve upon LB 775. Rather, the piggybacking on LB 775 replicates the lack of accountability that is one of LB 775's serious flaws. Performance assessment or evaluation of the

program is not required. This allows the same problems that have plagued LB 775 to be replicated in the City's reimbursement of impact fees plan.

Furthermore, there is no way of actually knowing whether a business would have built or expanded without LB 775 or City reimbursement of impact fees. Neither LB 775 nor the City Criteria require a declaration from the applicant business that the business development would not have occurred without the subsidy. This is a critical application requirement that other economic development programs like Community Development Block Grants include.

3. Lack of disclosure

The City's reimbursement plan does not improve upon LB 775's very limited disclosure provisions. Thus, it is no more transparent than LB 775. Indeed, the City Criteria, at Section 12(3), provide, "No information shall be provided in the [City's annual] report that is protected by state or federal confidentiality laws."

The City Criteria, at Section 12(2)(e) and (f), provide that the annual report list expected reimbursement to be allowed on the proposed investment and the number of jobs to be created. The Criteria do not require that *actual* amounts of investment, *actual* amounts reimbursed, and the *actual* number of new jobs created be published. These are data that members of the public deserve to know in return for the benefits they provide to the recipient businesses. These data are also critical in assessing the actual value and effectiveness of the program.

It should be noted that, under the current proposal (that piggybacks on LB 775), even if the City wanted to conduct a cost-benefit analysis of the program after it had become operational, the City would not have access to the raw data necessary to carry out such an analysis. However, if the City chose to administer an impact fee reimbursement plan entirely under its own authority, it could access the necessary information.

As discussed above, piggybacking on LB 775 as currently proposed will also mean that the City personnel will not know when an applicant has qualified under LB 775 because this confidential information. Therefore, the City's annual report requirement, in City Criteria Section 12(2)(g), that the total number of qualified applicants be published will not be able to be accomplished.

III. Recommendations

The Planning Commission should not adopt the proposed Criteria. Instead, the following is recommended:

1. The City should take adequate care in its policymaking.
2. The City should take the time to discover whether there really is a specific need.
3. Once a need has been established, several proposals to address the problem should be considered.
4. Conduct a cost-benefit analysis of each proposal under serious consideration.
5. Steer clear of the mistakes of LB 775.
6. Make sure all legal issues are properly investigated.
7. Any plan considered to address a real need should:
 - a. Assure openness and accountability; and
 - b. Include mechanisms for evaluation, including an annual cost-benefit analysis.

Before proceeding any further with economic development proposals, the City should hire local economists to conduct an economic development study and determine what Lincoln's needs actually are.

These recommendations are intended to help policymakers to make better-informed and wiser public policy that is likely to benefit the public widely at an acceptable cost. I am confident that the City of Lincoln can do better than the current Criteria proposal.

Feel free to contact me if you require any further information. Thank you for your consideration.

Sincerely,



Lynn E. Moorer

Lynn E. Moorer

PUBLIC INFORMATION

ON ANY LB 775 BUSINESS

1. Original company name
2. Project location
3. *Promised investment / promised new jobs*
4. Year(s) LB 775 agreement is in effect

Agreements Signed in 2002 That are Still in Effect

Company Name	Project Size	Project Location
1 American Meter Company	\$16.5M + 50 emp	Nebraska City
2 Ameritrade Holding Corporation	\$19.2M + 110 emp	Omaha
3 Cintas Corporation No. 2	\$5.6M + 120 emp	Omaha
4 ConAgra Beef Company	\$21M + 100 emp	Grand Island
5 Eagle Capital Group Inc.	\$3.6M + 30 emp	Hastings
6 Farmland Foods, Inc	\$11.7M + 100 emp	Crete
7 First National of Nebraska, Inc.	\$258.6M + 100 emp	Omaha, David City, Columbus, Norfolk, Alliance, Chadron, Gering, Scottsbluff, North Platte, Fremont, Kearney
8 Coca-Cola Enterprises	\$4.6M + 42 emp	Lincoln
9 Leprino Foods Company	\$7.8M + 30 emp	Ravenna
10 Lester Electrical of Nebraska, Inc.	\$3M + 30 emp	Lincoln
11 M.G. Waldbaum Company	\$18.9M + 109 emp	Wakefield, Bloomfield
12 Molex Incorporated	\$19M + 120 emp	Lincoln
13 Mutual of Omaha Insurance Company	\$166M	Omaha
14 Nash Finch Company	\$4.5M + 30 emp	Omaha
15 Natura Manufacturing Inc.	\$23.39M + 100 emp	Fremont
16 Professional Veterinary Products, LTD	\$10M + 100 emp	Omaha
17 Quality Refrigerated Services, Inc	\$3M + 30 emp	Omaha
18 Radio Engineering Industries, Inc.	\$4M + 50 emp	Omaha
19 Wal-Mart Stores, Inc.	\$40M + 600 emp	North Platte
20 Wright Printing Co.	\$5.09M + 33 emp	Omaha

Source: Department of Revenue 2002 Annual Report

CITY PLAN FEATURES NOT PUBLIC WITH LB 775

1. Qualification for LB 775 benefits
2. Maintenance of levels for 3 years
3. \$12.99 / hour average base-minimum wage
4. Project completion